



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



143929

REPLY TO THE ATTENTION OF:

December 16, 2004

Annemargaret Connolly
WEIL, GOTSHAL & MANGES LLP
1501 K Street, N.W., Suite 100
Washington, D.C. 20005

Re: Tower Hill Road Site - Operable Unit 1

Dear Ms. Connolly:

I am enclosing a fully executed Agreed Order On Consent. Again, thank you for your help in negotiating this document.

If you have any questions, please do not hesitate to call. I may be reached at (312) 353-3804.

Very truly yours,

Steven P. Kaiser
Associate Regional Counsel

SPK/spk
Enclosure
cc: Mike Ribordy (U.S. EPA)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

NEXTMEDIA OPERATING, INC.

Respondent:

) Docket No. V-W- '04 -C-802
)
) ADMINISTRATIVE ORDER BY
) CONSENT PURSUANT TO
) SECTION 106 OF THE
) COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
) COMPENSATION, AND
) LIABILITY ACT OF 1980,
) as amended, 42 U.S.C.
) §9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order by Consent ("the Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and NextMedia Operating, Inc. ("the Respondent"). The Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9604, 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order requires the Respondent to submit a Work Plan to address the environmental concerns in connection with property commonly known as 114 Tower Hill Road, Village of Gilberts, County of Kane, State of Illinois (the "Tower Hill Road Site-Operable Unit 1" or the "Site"). A more complete legal description of the property is included in the Findings of Fact section, below.

A copy of this Order will also be provided to the State of Illinois, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

Respondent's participation in this Order shall not constitute an admission of liability or admission of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA, and upon Respondent and Respondent's receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order, and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Order, the Respondent stipulates that the factual statutory prerequisites under CERCLA necessary for issuance of this Order have been met. U.S. EPA's findings and this stipulation include the following:

1. The Tower Hill Road Site-Operable Unit 1 ("OU1") is located within the bounds of an approximately 4.99 acre parcel of real property commonly known as 114 Tower Hill Road, Gilberts, Illinois. The southern portion of the Site consists of an approximately 300 foot wide swath of wetlands. The legal description of the property is as follows:

That part of the northeast 1/4 of section 23, Township 42 North, Range 7 East of the Third Principal Meridian described as follows: beginning at the intersection of the north line extended easterly of windmill meadows unit 2, a subdivision of said section 23, with the westerly line of the Elgin And Belvidere Electric Company's right of way; thence north 25 degrees 14 minutes 17 seconds west along said westerly right of way line 857.84 feet; thence south 64 degrees 45 minutes 43 seconds west 274.46 feet; thence south 25 degrees 14 minutes 43 seconds west 274.46 feet; thence south 25 degrees 14 minutes 17 seconds east and parallel with said westerly right of way line, 729.25 feet to said extended north line of windmill meadows unit 2; thence north 89 degrees 52 minutes 07 seconds east along said extended north line 303.10 feet to the point of beginning, in the Township of Rutland and Village of Gilberts, Kane County, Illinois.

2. The Tower Hill Road Site-OU1 is currently owned by NextMedia Operating, Inc. ("NextMedia") which acquired the Site in Spring 2004, solely because the Site contains a radio transmitting tower on its north end.

3. NextMedia does not conduct operations on the Site other than maintenance of the radio tower. The perimeter of the Site is not fenced. In June and July 2004, URS, an environmental consulting firm acting at the direction of the former owner of the Site, and with the permission of NextMedia, began cleanup activities that included the excavation and off-site disposal of lead-contaminated soils. U.S. EPA has reviewed the cleanup activities and concluded that the activities appear to have been performed in a manner consistent with federal law. The cleanup activities were voluntarily suspended by URS at the request of U.S. EPA, resulting in an open excavation measuring approximately 40 feet wide, 90 feet long and 4 feet deep within the Site. NextMedia has erected a chainlink fence around the perimeter of the excavation.

4. To the immediate north of the Site's property line and approximately 600 feet north of the excavation is a residence currently occupied by a family that includes a minor child. Immediately east of the Site is a parcel of property fifty feet wide owned by the Village of Gilberts. The Village of Gilberts parks municipal vehicles in this area. Immediately east of the parcel owned by the Village is a railroad track and right-of-way operated by the Chicago and Northwestern Railroad and owned by Union Pacific Railroad; the tracks and right-of-way are 100 feet wide. East beyond the railroad right-of-way lies the Village of Gilberts. The Village includes residences, the Village Hall and small businesses. The nearest residences to the east of

OU-1 are less than 300 feet from the eastern property line of the Site. Farm fields lie to the west of the Site.

5. Local residents have told representatives of the U.S. EPA that lead battery recycling operations were conducted in the vicinity of the Site during the late 1960's. Approximately 600 feet north of the Site is a parcel of real property referred to by the U.S. EPA as the Gilberts/Kedzie site. U.S. EPA has been advised by local residents that lead battery recycling operations were conducted on the Gilberts/Kedzie site during the late 1960's and 1970's. U.S. EPA has observed on the Gilberts/Kedzie site black plastic fragments that appear to be fragments of lead battery casings. U.S. EPA has collected soil samples from the Gilberts/Kedzie site, and had the samples analyzed. The laboratory analysis has concluded that lead is present in soils on the Gilberts/Kedzie site just north of the Site in concentrations up to 120,000 parts per million ("ppm").

6. On October 21, 2003, a below ground fire erupted on the Gilberts/Kedzie site. The Illinois Environmental Protection Agency ("Illinois EPA") and the local fire department requested U.S. EPA assist in the response. U.S. EPA's Emergency Response personnel and Superfund Technical Assistance and Response Team ("START") mobilized to the Gilberts/Kedzie site to provide air monitoring and sampling assistance.

7. On March 15, 2004, Illinois EPA requested U.S. EPA assume responsibility for the further investigation and remediation of the Gilberts/Kedzie site.

8. On June 3 and 4, 2004, the Illinois EPA Office of Site Assessment, in cooperation with U.S. EPA conducted an assessment on the Village property (Tower Hill Road Site-OU2), and, inadvertently, on portions of the Tower Hill Road Site-OU1. Illinois EPA and U.S. EPA conducted an assessment of approximately 50 sampling locations using a Geoprobe coring device and a field-based XRF. Nine soil samples were also taken to Region 5's Central Regional Laboratory for additional analysis. The XRF detected lead concentrations at up to 33,807 ppm in surface soils at OU2. The lead contamination appeared to extend from the surface to between two and three feet below the surface.

9. At the time of the June 3-4, 2004, sampling, Illinois EPA inadvertently collected samples from Tower Hill Road Site-OU1. Analysis of soil samples collected from Tower Hill Road Site - OU1 also indicated high concentrations of lead contamination. Soil boring 185 contained lead in a concentration of 65,516 ppm. Soil boring 180 contained lead in a concentration of 92,808 ppm.

10. Prior to July 23, 2004, neither U.S. EPA nor Illinois EPA notified NextMedia or the former owner of the Site of the sampling activities or the lead contamination found in the samples collected in and around the Site.

11. NextMedia acquired the Site in the Spring of 2004. A pre-acquisition assessment identified a "hot spot" with elevated levels of lead in the soil. NextMedia represents that it is a Bona Fide Prospective Purchaser within the meaning of Section 101(40) of CERCLA, 42 U.S.C. Section 9601(40), and intends to take all steps to maintain its status as Bona Fide Prospective Purchasers, and for purposes of this Agreed Order, U.S. EPA accepts this representation. The Respondent represents, and for the purposes of this Agreed Order U.S. EPA relies on those representations, that Respondent has had no involvement with the placement of hazardous substances at the Site and that Respondent has done all appropriate inquiry prior to purchase of the property.

12. On July 23, 2004, U.S. EPA met on the Tower Hill Road Site-OU1 with representatives of the Illinois EPA, the Illinois Office of the Attorney General, the Office of the State's Attorney of Kane County, Illinois, and the Village of Gilberts. The environmental consultant, URS, also sent a representative to the meeting. During the meeting, U.S. EPA representatives observed an excavation approximately 40 feet wide, 90 feet long and 4 feet deep. There was some water pooling in portions of the excavation. The excavation was surrounded by orange plastic fencing. An intact 55-gallon drum of unknown contents was located in the south wall of the excavation. The walls of the excavation contained large quantities of black plastic battery casing fragments. The black plastic battery casing fragments observed in the walls of the excavation appear similar to those found on portions of the Gilberts/Kedzie site immediately north and on the Tower Hill Road Site-OU2 immediately east of the Site. The presence of high concentrations of battery casing fragments within the surface soils of the Site and below grade at the Site supports the conclusion that waste from battery recycling operations was placed in and around the Site. The presence on and within the Site of the battery casing fragments also support the conclusion that lead may be present in soils at the Site in potentially high concentrations.

13. U.S. EPA has determined that the Tower Hill Road Site-OU2 and the Gilbert/Kedzie sites present a potential threat to nearby human populations and that the Tower Hill Road Site-OU1 may pose a threat to nearby human populations because of the potential for high concentrations of lead in surface and exposed subsurface soils.

14. Lead has been designated a hazardous substance pursuant to Section 102(a) of CERCLA, 42 U.S.C. 9620(a). Contaminated soils and dust have the potential to migrate off-site. Nearby residents and workers may potentially trespass upon the Site. Lead exposure by inhalation and/or ingestion may pose an adverse risk to human health.

15. U.S. EPA has prepared an Action Memorandum for the Tower Hill Road Site-OU-2 and is in the process of securing funding for that cleanup. U.S. EPA has issued letters to Glenn Kedzie and Raymond L. McNew, Sr. advising them of their potential liability for the cleanup of the Gilberts/Kedzie site. It has prepared an Action Memorandum and is in the process of securing funding for the Gilberts/Kedzie Site cleanup. Respondent has agreed to remediate the Tower Hill Road Site-OU-1 to a cleanup level of 400 ppm of lead.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

1. The Tower Hill Road Site-OU1 is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Lead is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Respondent, NextMedia Operating, Inc., is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).

5. The conditions present at the Site constitute a potential threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of lead-contaminated soils in proximity to a residence located less than 300 feet north of the Site and occupied by a minor child, the proximity of other residences less than 300 feet east of the Site, the proximity of an outdoor work area operated by the Village of Gilberts, Illinois, and the potential proximity within the Site boundaries of wetlands and animals associated with wetland habitats.

b. actual or potential contamination of sensitive ecosystems; this factor is present at the Site due to the existence of lead-contaminated soils abutting wetlands.

c. potentially hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, which may pose a threat of release; this factor may be present at the Site due to the existence in the south wall of the excavation at the Site of a 55-gallon drum filled with unknown contents.

d. potentially high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, which may migrate; this factor is present at the Site due to the existence of lead-contaminated soils within the top four feet of portions of the Site.

e. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor may be present at the Site due to the existence of potentially dry conditions in September accompanied by winds that typically blow from west to east.

6. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

7. The actions required by this Order, if properly performed, are consistent with the NCP, 40 CFR Part 300, as amended, and with CERCLA, and are reasonable and necessary to protect the public health, welfare, and the environment.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, On-Scene Coordinator or Remedial Project Manager

a. Respondent shall perform the actions required by this Order itself or retain contractors to undertake and complete the requirements of this Order. Respondent shall notify U.S. EPA of the name and qualifications of such contractors within five (5) business days of the effective date of this Order, as defined in Section XX below; provided a copy of the executed Order is

delivered to Respondent within 24 hours after the Effective Date. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work on-site under this Order at least five (5) business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA either fails to disapprove such contractor or subcontractor or fails to request additional time to review the credentials of the contractor or subcontractor within five (5) business days, such contractor or subcontractor shall be deemed approved. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within ten (10) business days following U.S. EPA's disapproval, and shall notify U.S. EPA of that contractor's name and qualifications within fourteen (14) business days of U.S. EPA's disapproval. U.S. EPA shall exercise all rights of approval in a reasonable manner. Respondent has provided U.S. EPA with the name and qualifications of the following contractors and subcontractors: URS Corporation, R. W. Collins, Inc., Severson Environmental Services, Inc. and STAT Analysis Corporation (hereinafter, the "Approved Firms"). U.S. EPA has approved these contractors for work at the Tower Hill Road Site-OU1. No further notice is required with respect to the Approved Firms.

b. Within five (5) business days after notification of NextMedia by U.S. EPA in writing of the Effective Date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. As long as the Project Coordinator is employed by an Approved Firm, the Project Coordinator shall be deemed to be approved. U.S. EPA retains the right in its reasonable discretion to disapprove of any Project Coordinator named by the Respondent who does not work for an Approved Firm. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within five (5) business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within five (5) business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent. U.S. EPA shall also send a copy of all submissions to Annemargaret Connolly, Weil, Gotshal & Manges LLP, 1501 K Street, N.W., Suite 100, Washington, D.C. 20005 and Christopher A. Albrecht, URS Corporation, 122 S. Michigan Ave., Suite 1920, Chicago, Illinois 60603.

c. With respect to any proposed contractor other than an Approved Firm, or a Project Coordinator other than one that works for an Approved Firm, Respondent shall demonstrate that the proposed contractor or proposed Project Coordinator has a quality management system that is in compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's or proposed Project Coordinator's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation approved by U.S. EPA. If at any time Respondent proposes to use a different contractor or Project Coordinator, Respondent shall notify U.S. EPA at least five (5) days prior to that contractor or Project Coordinator beginning work under this Order. A QMP is not required from an Approved Firm or a Project Coordination from an Approved Firm.

d. The U.S. EPA has designated Mike Ribordy of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, SE-5J, Chicago, Illinois 60604-3590, by certified or express mail. Respondent shall also send a copy of all submissions to Steven P. Kaiser, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago,

Illinois, 60604-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and use two-sided copies.

e. U.S. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within two business days of oral notification.

2. Work to Be Performed

Respondents shall perform, at a minimum, the following removal activities:

a. Prepare a work plan that includes tasks and a timeline for the removal activities, as well as a site Health and Safety Plan addressing reasonably anticipated conditions .

b. Develop and implement a Site security plan as necessary to prevent unauthorized access to contaminated areas;

c. Determine the degree and identify the extent of lead-contaminated soils on the Site, including any contamination that has migrated to unexcavated portions of the Site;

d. Characterize, treat, excavate, and properly dispose of lead-contaminated soils located at the Site in accordance with U.S. EPA's Off-Site Rule, 40 CFR Section 300.440, 58 Federal Register 49215 (September 22, 1993);

e. Conduct confirmatory soil screening and sampling to ensure removal of contamination to required standards for commercial use;

f. As required to comply with applicable law, properly address any additional hazardous waste and/or materials identified during the removal action.

2.0 Work Plan and Implementation.

a. Within fifteen (15) business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal actions generally described in Paragraph 2 above, which approval shall not be unreasonably withheld, conditioned or denied. Respondent is expected to propose treatment of soils with the patented MAECTITE® chemical treatment process. U.S. EPA shall not withhold, condition or deny Work Plan approval solely on the basis of Respondent's proposed use of the MAECTITE® process. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order. A Quality Assurance Project Plan ("QAPP") shall be included as part of the Work Plan. The QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

b. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. U.S. EPA shall disapprove, require revisions to, or modify the draft Work Plan in whole or in part only if, in U.S. EPA's unreviewable discretion, the draft Work Plan, when implemented, fails to address the objectives of this Agreement. If U.S. EPA requires

revisions, Respondent shall submit a revised draft Work Plan within ten (10) days of receipt of U.S. EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. Respondent shall not commence any Work to address lead-contaminated soils or other hazardous substances identified in the course of addressing the lead-contaminated soils except in conformance with the terms of this Order. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to Paragraph 2.0(b). U.S. EPA agrees to act promptly in undertaking the reviews necessary.

2.1 Health and Safety Plan

Within fifteen (15) business days after the Effective Date of this Order, the Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

2.2 Quality Assurance and Sampling

a. All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA regulations or requirements regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall require that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance. Respondent shall require its contractors to follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also require its laboratories to provide analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than two (2) business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

2.3 Reporting

a. Respondent shall submit or otherwise cause its Project Coordinator to submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

2.4 Additional Work

In the event that the U.S. EPA or the Respondent determines that additional work, including support sampling and/or an engineering evaluation, is necessary to accomplish the objectives of this Agreement, notification of such additional work shall be provided to the other party in writing. Any additional work which Respondent determines to be necessary shall be subject to U.S. EPA's written approval prior to commencement of the additional work, which approval shall not be reasonably withheld, denied or conditioned. Respondent shall complete, in accordance with standards, specifications, and schedules U.S. EPA has approved, any additional work Respondent has proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary in order to achieve the objectives identified in paragraphs 2.a.-g., above, and has provided written notice of pursuant to this paragraph.

2.5 Extensions

Provided NextMedia and the Approved Contractors are using commercially reasonable efforts to implement the Work Plan and meet deadlines established herein, U.S. EPA shall grant reasonable modifications to the proposed scope and time frames necessitated by discoveries made during implementation or as a result of delays arising out of inclement weather or illness.

3. Access to Property and Information

Respondent shall provide access to the Site to implement this Order, and shall provide access to all records and documentation in Respondent's possession related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. Subject to health and safety restrictions, these individuals shall be permitted to move freely at the Site in order to conduct actions which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request/receipt, the results of all sampling or tests and all other data generated by Respondent or its contractors, or on the Respondent's behalf during implementation of this Order.

4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information in its possession relating to work performed under this Order, for six years following completion of the actions required by this Order. At the end of this six year period and 60 days thereafter if U.S. EPA has not requested copies of such documents or information, Respondent may destroy such documents and information. If prior to destruction, U.S. EPA requests copies, Respondent shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide copies of any such non-privileged documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

If Respondent asserts a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance with the U.S. EPA Revised Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

Respondent shall perform all activities required pursuant to this Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan ("NCP").

Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site. Where any portion of the activities requires a federal or state permit or approval, the Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall promptly take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondent fails to respond, U.S. EPA

may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any activities required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site; provided such authority is consistent with this Order. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

1. If the Respondent objects to any U.S. EPA action taken pursuant to this Order, the Respondents shall notify U.S. EPA in writing of its objection within ten (10) calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which the Respondent relies (hereinafter the "Statement of Position").

2. U.S. EPA and Respondent shall within thirty (30) calendar days of U.S. EPA's receipt of the Respondent's Statement of Position, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The parties may extend the Negotiation Period, but any decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

3. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

4. Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, U.S. EPA will issue a written decision on the dispute to the Respondents. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the U.S. EPA decision regarding the dispute.

5. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as

provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

VIII. FORCE MAJEURE

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's commercially reasonable efforts to fulfill the obligation and shall include inclement weather or minor delays of not more than two (2) days associated with Approved Contractor illness or injury. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify U.S. EPA orally within 24 hours after Respondent becomes aware of any event that Respondent contends constitutes a force majeure, and in writing within 7 calendar days after Respondents becomes aware of any events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delays. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondent an extension of time for performance/waive any claim of force majeure by the Respondent. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

IX. STIPULATED AND STATUTORY PENALTIES

For each calendar day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For > 7 Days</u>
Failure to Submit a Draft Work Plan	\$250/Day	\$500/Day
Failure to Submit a Revised Work Plan	\$250/Day	\$500/Day

Late Submission of Progress Reports or Other Miscellaneous Reports/Submittals	\$ 100/Day	\$ 250/Day
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Failure to Meet any Scheduled Deadline in the Order	\$ 250/Day	\$ 500/Day
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Notwithstanding the foregoing, U.S. EPA has accepted the representations of Respondent that it is a Bonafide Prospective Purchaser within the meaning of Section 101(40) of CERCLA, 42 U.S.C. §9601(40), and agrees that it will not demand payment of stipulated penalties unless it has first provided Respondent with an opportunity to cure the violation within a specific time period and Respondent has failed to do so. If U.S. EPA determines that Respondent has failed to cure the violations within the specified time frame, it will notify Respondent in writing of the failure and penalties will begin to accrue from the date identified in the notice of opportunity to cure. Respondent shall, within 30 calendar days of receipt of a written demand by U.S. EPA, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting & Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Stipulated Penalties - Tower Hill Road Site-OU1" and shall reference the payer's name and address, the EPA site identification number, and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after final resolution of the dispute is resolved.

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the

performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. U.S. EPA shall not impose penalties (other than stipulated penalties) unless Respondent exhibits bad faith in implementing this Order.

The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of this Order. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

Except as expressly provided in Section XI (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

XI. COVENANT NOT TO SUE BY U.S. EPA

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform actions agreed to in this Order except as otherwise expressly reserved herein.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XII. RESERVATIONS OF RIGHTS BY U.S. EPA

1. Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions authorized by law necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief under law to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

The covenant not to sue set forth in Section XI above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for performance of response action other than the Work;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- f. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

2. Work Takeover. In the event U.S. EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in their performance of the Work, or is implementing the Work in a manner which could reasonably be expected to cause an unreasonable endangerment to human health or the environment, U.S. EPA may assume the performance of all or any portion of the Work as U.S. EPA determines necessary. Respondents may invoke the procedures set forth in Section VII (Dispute Resolution) to dispute U.S. EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Order, U.S. EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XIII. COVENANT NOT TO SUE BY RESPONDENT

1. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

2. Except as provided in Paragraph 4 of this Section (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XII, Paragraphs 1 (b), and (d) - (f), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

3. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4. Respondent agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XV. INDEMNIFICATION

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondent) or any of its contractors or subcontractors.

XVI. MODIFICATIONS

Except as otherwise specified in Section V.2. (Work To Be Performed), if any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within seven (7) business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties. Any modification to this Order shall be incorporated into and made an enforceable part of this Order.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondents of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including, *e.g.*, post-removal site controls, and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA determines that any such Work has not been completed in accordance with this Order, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent may confer with U.S. EPA in the event it disagrees with U.S. EPA's conclusion that the work has not been completed in accordance with this Order. After conferring with U.S. EPA, Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SUBMISSIONS/CORRESPONDENCE

Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Order, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Respondent shall be addressed to:

Schuyler Hansen
NextMedia Operating, Inc.
Treasurer and Chief Accounting Officer
6312 South Fiddler's Green Circle
Suite 360E
Englewood, CO 80111
(303) 694-0187
shansen@nextmediagroup.net

With copies to:

Annemargaret Connolly
Weil, Gotshal & Manges LLP
1501 K Street, N.W., Suite 100
Washington, D.C. 20005
Fax: (202) 857-0940
annemargaret.connolly@weil.com

Christopher A. Albrecht
URS Corporation
122 S. Michigan Avenue
Suite 1920
Chicago, IL 60606
chris_albrecht@urscorp.com

Submissions to U.S. EPA shall be address to:

Mike Ribordy
U.S. EPA - Region 5
77 West Jackson Boulevard, SE-5J
Chicago, Illinois 60604-3590
Fax: (312) 353-9176

With copies to:

Steven P. Kaiser
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 60604-3590
(312) 886-0747

XIX. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XX. EFFECTIVE DATE

This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:


Tower Hill Road Site-OU1
Village of Gilberts
Kane County, Illinois

SIGNATORIES


Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is authorized to execute and deliver this Order on behalf of such signatories and to bind such signatory to this document.

Agreed this 19th day of November, 2004.

NEXTMEDIA OPERATING, INC.

By 

IT IS SO ORDERED AND AGREED

BY:  DATE: 11-29-04
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

**REMOVAL PROGRAM
106 CONSENT ORDER
ROUTING SLIP
(REVISED OCTOBER 1999)**

Tower Hill Road Site-Section 1, Kane County, Illinois
(Initial 106 Consent Order EPA transmittal to PRPs for signature.)

Please sign the Yellow and check your name off this page.

Then pass the document on to the next name.

Do not sign this page, SIGN THE YELLOW

MAIL